S. Bij 12/53

1953.

File No. 53

K

Examiner

Legal **DEPARTMENT**
E **BRANCH**

Subject:— Suits.. Bijapur

C.S. No. 264 and 265 of 1952

1) S. H Hebballati
2) Shri M.K. Pated. } -- P'Iffs

V/S

The State of Bombay -- Deft.

For a declaration that the order is illegal and not binding on the plffs, etc.

60(E)

File No. S. Bij 12/53

Std. Scott. Slip 24-B

12/53

Civil Suit No.264/1952.

In the Court of the Civil Judge, Senior Dn., Bijapur.

1. Shivagondappa Honmallappa Hebbalhatti,
Lingayat, 50, agriculture,
Honutagi, Taluka Bijapur. ---- Plaintiff.

Vs.

2. The State of Bombay. ---- Defendant.

The plaintiff sues as follows:-

1. The plaintiff is one of the sureties under the Bond to one M.K.Pattad, a Godown Keeper at Huvin-Hipparg The plaintiff is ready and willing to act up to the term of the bond, if Shri M.K.Pattad is legally found responsible for the same. The plaintiff's suit is for declaration and injuction that he is not liable to pay any amount.

2. The Godown Keeper Shri M.K.Pattad was appointed a Godown Keeper in 1949, and for him the present plaintiff stood surety to the extent of Rs.1000/-. In fact, there are two sureties. It was alleged by the Government that there was a loss of 50 bags of jowar, as there was a shortage to that extent detected after the empitting pit No.8 of Huvin-Hippargi where Shri Pattad's posting had been made. On the report of the shortage it appears Govt. started haphazard enquiry. The inquiry was conducted in an illegal manner by incompetent persons and by not following the procedure as laid down by the rules by the Government for the purpose.

3. The Government did not stop there, they filed regular complaint against him Shri Pattad and after a regular enquiry the officers concerned in order to shield incompetency and illegality and their faces brought about the report from the police papers 'A' summary report. So, no responsibility for the loss was duly proved against Shri M.K.Pattad, for whom the Plaintiff should surety. A slip shod enquiry was made and they fixed the responsibility on Shri M.K.Pattad, ~~behind~~

behind his back and that of the sureties. No proper procedure was followed and even the sureties were not informed of the inquiry or the investigation. So, the Collector's finding that Mr.M.K.Pattad. was responsible for the loss was illegal and wrong as hebased his finding on the report of the officer who was legally incompetent to conduct such an inquiry, departmental or any other.

4. As the fixing up of the responsibility was done behind the back of the plaintiff, the finding is both illegal and ultravires and such finding is not binding on the plaintiff.

5. The District Magistrate in pursuance of his order dated 18-8-1950, has proceeded with the sale of the immoveable property S.No. of Ukamnal belonging to the plaintiff. The sale was fixed on 13-3-1952 for the alleged loss of Rs. 1950/- caused by Shri M.K.Pattad. The plaintiff is not bound to abide by the decision of the District Magistrate in this behalf. The plaintiff further alleges that the order of the District Magistrate in putting up the land of the plaintiff to sale acted illegally as he ignored the terms and the conditions of the surety bond. The liability of the plaintiff arises only if and when the original defaulter, fails to pay or it was found impossible to recover from him. If the original defaulter gets discharge, the surety is entitled to a discharge from the liability. The proceeedings agains the plaintiff are premature and illegal.

6. The passing of the order by the District Magistrate behind the back of the surety and the original defaulter offends against the principles of justice, and equity and unfair to the plaintiff and such an order is illegal and not binding on the plaintiff.

The cause of action arose, when the plaintiff's property was put up for sale i.e. on 23-3-1952.

The plaintiff resides within the jurisdiction of this Court; the cause of action arose within the

3-M

within the jurisdiction of this Court. The property sought to be sold in the attempt of recovery of the alleged loss to Government is situated within the jurisdiction of this Court. Hence, this Court is competent to try this suit.

9. The requisite legal notice is given as per section 80 of the Civil Procedure Code of 1908 and was served on the defendant in May 1952.

10. The suit is for declaration that the order passed by the District Magistrate on 13-2-1950, is illegal and further that the order passed by the Collector in virtue of which the property was put up to sale on 23-3-1952 is illegal. The Court fees are paid on Rs. 205/- for the purpose of the jurisdiction and also for pleader's fees is the same.

(ii) The Plaintiff prays:-

(i) It should be declared that the order passed by the Collector and the District Magistrate on 18-8-1950 relying on the report of the officer incompetent to make the report and inquiry is illegal and not binding on the plaintiff and that the order of putting the land of the plaintiff to sale is also illegal.

(ii) For an injunction against the District Magistrate and Collector not to hold a sale of the property of the plaintiff.

(iii) For costs of this suit.

(iv) Any other equitable relief plaintiff is found entitled.

Bijapur,
Date:-

Plaintiff.

I, Shivagondappa Honmallappa Hebbalhatti, aged 50, the plaintiff in the above suit do hereby solemnly affirm that what is written in the plaint is true to the best of my knowledge and belief.

Bijapur,
Date:- 1952.

Plaintiff.

Filed in Court on:- 14-8-1952.

Sd/-
Pleader.

33 7
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Civil Suit No.265 of 1952.

In the Court of the Civil Judge, Sr.Dn.,Bijapur.

======

1. Muttappa Kallappa Pattad, aged 30, Lingayat, agriculturist, Honutagi, Taluka Bijapur --- ---- Plaintiff.

Vs.

1. The State of Bombay. --- ----- Defendant.

Herein the plaintiff sues as follows:-

1. The plaintiff was working as Godown Keeper at Huvin-Hippargi, Taluka Pagewadi in the year 1949-50 During September,1949, there was a heavy down pour of rain, which caused damage to the grain pits due to - perculation of water.The plaintiff being in charge of the grain pits and the Godown, it was the duty of the - watchman to see the grain pits were not tampered with. On ~~em~~pitting the grain pit No.8, of the said village, it was alleged that there was a shortage of the stock by 50 bags of jowar and the matter was reported to the - office of the Mamlatdar, who in turn sent report to the D.D.S. For the shortage of the grains in pits it is really the watchman who was responsible.Without any preliminary inquiry, the plaintiff was immediately discharged; his services being terminated and at the time the watchmen was found absconding from the village.

2. The awal Karkun who was not competent to hold an inquiry according to the Government servants' Conduct Rules etc., held an inquiry in slip shod manner and - filed the complaint against the plaintiff for - misappropriation etc., which however was ended in a - A summary report by the Police. No attempt was made to secure the presence of the watchman Basappa Chandappa Shankarappagol. The plaintiff understands that ~~in~~ he was not even examined either by the Aval Karkun or the Police

No regular inquiry was made ~~in~~ either departmental or police. No proper procedure was followed and the -

rollowed and the termination of the service of the - plaintiff by the Government under the circumstances is both illegal and the action of the Government offends against the rules of natural justice and equity. Hence, the termination of the service of the plaintiff is illegal.

4. The plaintiff's suit is for the reinstatement to his former post in as much as no offence or dereliction of duty is proved against him.

5. The order of the District Magistrate that the Plaintiff was responsible for the loss, if it had been caused, is illegal and ultra-vires as he (1) the District Magistrate did not follow the rules of inquiry and (2) set up an inquiry by incompetent persons; (3) no statements of any persons were recorded in the presence of the plaintiff; and (4) nor was he allowed to cross examine the persons so examined; (5) no dates of inquiry were intimated to the plaintiff; (6) that no opportunity was given to him to state and prove his case; (7) in fact everything was done behind the back of the plaintiff; (8) so fixing up of the responsibility for the loss on the plaintiff was improper, and illegal.

6. The cause of action arose when the plaintiff came to know of the order of the District Magistrate, on 13-1-1952.

7. The casue of action arose in the territorial jurisdiction of this Court, and as the plaintiff resides within the - jurisdiction of the Court, this Court has power to try this suit.

8. As the suit is for declaration that the order passed by the District Magistrate on 18-8-1950 known to the - plaintiff on 13-1-1952 was illegal and ultravires . The suit is valued at Rs. 200/- and the cost fee is paid on that amount accordingly.

9. Due notice of this has been given as required by - Section 80 of the Civil Procedure Code 1908 on 6th May, 1952.

(10) The plaintiff prays:-

(i) It should be declared that order passed by the District Deputy Collector, on 18-8-19550 as illegal as he passed that order without going through the - procedure as laid down by the Government in the - matter of the conduct of the Govt.servants.

(ii) Costs of the suit should be awarded.

(iv) Any other equitable or just relief, the Court thinks, the plaintiff is entitled to.

Bijapur.
Date August,1952. Plaintiff.

I, Muttappa Kallappa Pattad, aged 30, the - Plaintiff in the above suit do hereby solemnly affirm that what is written in the plaint is true to the bes of my knowledge and belief.

Bijapur.
Date 14th August,1952. Plaintiff.

Filed in Court on:-

Sd/-

Pleader.

Presented on 14-8-1952.

Sd/-

Clerk of the Court.

2.

My Com

Memory of Comp

M. K Patel, C

who has filed a

Court.

4 CSD/II-C.

Please see the Collr. Bijapur's letter dt. 22-1-53 at p. 135 ante with ref to the Delhi letter dt. 5-12-52 (p. 95 ante) and dt. 11-12-52 (p. 123 ante)

2. This case pertains to the recovery of Court dues from Shri M.K Patel, Ex G.E. Thasra Irrigation who has filed a civil suit against Govt.

3. The question whether the civil suit is defensible is under consideration, and the D.M. has now submitted his detailed report under Rule 118 of Civil Officers Rules. This case may be passed on to ~~R.T.A.~~ for necessary action viz. to sanction the defence of the suit. In fact the Govt had already been referred to him and he had asked for certain informn under his noR dt. 26-11-52 (Slip H) The Collr's clarification

in his recent letter (P. 135 ante) may be shown to the R2A with ref. to his NOR at Slip H, and he may be requested to sanction the defence of the Suit early.

7/2

THE SUIT
Ltr. No.
File No. 3720
Dt. R. 14/2/53.
Subject

Dy Dcs (D)

NOR No. 947/1609/II e. dt. 13-2-53, to Remembrancer of Legal Affairs, with 5 files of cttns Case Laws.

LEGAL DEPARTMENT

Pl. send the R2A with the 5 files cttn cases.

13/2

Bijapur Civil Suits Nos.264 and 265 of 1952.

Plffs. Shivagondappa Honamallappa Hebbalatti and Shri Muttappa Kallappa Pated have filed these suits against the State of Bombay. The suits are for the following reliefs:

(1) for a declaration that the order passed by the District Magistrate and Collector directing recovery of Rs. 1250/- being the cost of 50 bags of jowar misappropriated by Shri Pated, from him and his sureties, as arrears of land revenue, is illegal and not binding on the plffs;

(2) for costs of the suit.

2. Defence of the suit may be sanctioned on the lines of the accompanying brief.

2081

Received in C. S. D. Br. on 25/6/53

Secretary C.S.D. 25/6

13

No. 13745/E
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 26. 6. 1953.

Subject:- Bijapur Civil
Suit No. 264/265 of 195 2

MEMORANDUM:

The District Government-Pleader, Bijapur is informed that the defence of the suit noted above is sanctioned and he is requested to conduct the same on the line of the brief, a typed copy of which is sent herewith in advance Papers of the case in one file, received from the Collector accompany

for Remembrancer of Legal Affairs.

To.
The District Government Pleader, Bijapur

GRLD No. 23099/E Dt 17/11/83
has been sent to the press. on 19/11/83

19/11

P

Civil Suit No. 265 of 1952.

IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION, BIJAPUR.

1. Muttappa Kallappa Patted of Honnutagi Taluka Bijapur. Plaintiff.

Vs.

1. The State of Bombay. Defendant.

Herein the written statement of the defendant is as under:-

1. The defendant denies the plaintiff's claims in the suit. The plaintiff is not entitled to any of the reliefs prayed for in the plaint.

2. The plaintiff has filed this suit without giving notice under section 80 of Civil Procedure Code in respect of the relief prayed for by him in para 10(i) of the plaint. Hence the plaintiff's suit is bad for want of notice under section 80 of Civil Procedure Code. The allegation in para 9 of the plaint is thus not correct and denied.

3. The plaintiff was temporarily appointed as officiating godown keeper. His appointment was purely temporary and terminable at any time without any notice and without any reasons being assigned. The plaintiff was discharged under the order of the District Magistrate dated 13-10-1949.

4. The plaintiff took charge of Huvin-Hippargi Godown centre on 5-9-1949 and of all the grains in the Pits including the grains of 195 bags of Jawar in Pit No.8. Unpitting operations of pit No.8 was made and the plaintiff reported the result of unpitting operations as 195 bags. Thereafter on 12-10-1949 the plaintiff submitted a report that there was a deficit of 50 bags in Pit No.8. The matter was entrusted to Police for enquiry. The D.S.P. informed the District Magistrate on 14-1-1952 that he had submitted an 'A' Summary repor

on 25-12-49

The District Magistrate directed the Mamlatdar to hold departmental enquiry. The Mamlatdar caused the enquiry to be made through the Tenancy Awal Karkun The Mamlatdar agreed with the findings of the Awal Karkun and submitted a report to the Collector and District Magistrate who held that the plaintiff had misappropriated 50 bags of Jawar and that its cost was Rs. 1250/-.He directed the recovery of the same from the plaintiff and his sureties as an arrear of land revenue.

5. The allegations of the plaintiff in para 1 of the plaint " which caused-------- percolation of water" are not correct and are denied. The further allegations in the same para that the watchman was respon--sible and that it was his duty to see that the grain Pits were not tampered with are not correct and are denied. The allegation that the Pits were tampered with is not true and is denied. The plaintiff being a godown keeper he was really responsible for the grain in his charge and the liability for the admitted shortage of 50 bags was rightly fixed on the plaintiff. All the allegations in para 1 of the plaint which are inconsistent with what is stated in paras 3 and 4 of this written statement are not correct and are denied.

6. The allegations of the plaintiff in paras 2,3 and 4 of the plaint except to the extent stated in paras 3 and 4 of this written statement are not correct and are denied.

7. The order of the District Magistrate that the plaintiff was responsible for the loss is legal and valid.The allegations in para 5 of the plaint are not correct and are denied.

8. No special procedure is prescribed or rules laid down for the District Magistrate to follow in the inquiry into the loss and fixing up the responsibility in respect of the loss to the Government. The enquiry was however made by following the usual procedure.Evidence was recorded and

17

the plaintiff's explanation was also taken.The enquiry was made by Tenancy Awal Karkun who was quite a competent Officer to make the enquiry into the loss of 50bags caused to the Government. The enquiry was thus legal and proper. The allegations to the contrary in para 10(i) of the plaint are not correct and are denied.

9. No cause of action has arisen for the plaintiff for filing the suit. The allegations in paras 6,7 and 8 of the plaint are denied.

10. The plaintiff's suit is not in time.

11. The orders passed by the Collector and District Magistrate are perfectly legal and valid.

12. All the allegations in the plaint which are inconsistent with or contrary to what is stated in this written statement are not true and are denied.

The plaintiff's suit may therefore be dismissed with costs.

Assistant Government Pleader,
BIJAPUR.

I, J.R.Desai, Assistant Government Pleader, Bijapur, do hereby declare that what is stated in paras 1 to 12 above is true on information received and believed to be true. Signed at Bijapur on _____

Assistant Government Pleader,
Bijapur.

IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION,
BIJAPUR.

Civil Suit No. 264 of 1952.

1. Shivagondappa Honmallappa
Hebbalhatti of Honnutgi
Taluka Bijapur. Plaintiff.

Vs.

The State of Bombay. Defendant.

Herein the Written-Statement of the defendant is as under:-

1. The defendant denies the plaintiff's claims in toto.

2. The plaintiff is not entitled to any of the reliefs prayed for in the plaint.

3. Shri M.K.Batted was appointed as officiating Godown Keeper. He executed a bond dated 27-1-1949 under Financial rule 40. The plaintiff and another were his sureties. Under the bond, Shri M.K.Patted and his sureties (including plaintiff) agreed to forfeit the amount of any loss, defalcation or damage due from Shri Patted. They further agreed that that amount may be recovered from them as an arrear of land revenue.

4. Shri M.K.Patted took charge of Huvin-Hippargi Godown Centre on 5-9-1949 and of all the grains in the Pits including the grains of 195 bags of Jawar in Pit No. 8. Unpitting operations of Pit No.8 was made and Shri M.K.Patted reported the result of unpitting operations as 195 bags. Thereafter on 12-10-1949 Shri M.K.Patted submitted a report that there was a deficit of 50 bags in Pit No.8. The matter was entrusted to Police for enquiry. The District Superintendent of Police informed the District Magistrate on 14-1-1952 that he had submitted an 'A' Summary report on 25-12-49. The District Magistrate directed the Mamlatdar to hold departmental enquiry. The Mamlatdar caused the enquiry to be made through the

Tenancy Awal Karkun.The Mamlatdar agreed to the findings of the Awal Karkun and submitted a report to the Collector and District Magistrate who held that Shri M.K.Patted had misappropriated 50 bags of Jawar and that its cost was Rs.1250/-. He directed the recovery of the same from Shri M.K.Patted and his sureties as an arrear of land revenue.

5. Accordingly the Mamlatdar of Bijapur issued notices of demand to the plaintiff,Shri Patted and other surety. Except the plaintiff, it was found that others had no property.Steps therefore were taken to recover the amount by attachment and sale of the plaintiff's property.

6. The order of the District Magistrate and Collector fixing the responsiblity for loss on Shir Patted is proper and legal. The said amount became due to Government from Shri Patted on account of defalcation,loss or damage caused to Government by Shri Patted. The plaintiff,therefore, is liable to make good the loss and action taken against him is perfectly correct,legal and valid.

7. The allegations of the plaintiff in paras 2 of the plaint " On the report of the shortage---------- for the purpose" are not correct and are denied.

8. The allegations of the plaintiff in para 3 of the plaint " the Government did not stop there---------- departmental or any order" are not correct and are denied. The allegation in para 4 of the plaint are not true and are denied.

9. The allegations in pars 5 of the plaint that the plaintiff is not bound ----------are premature and illegal, are not correct and are denied. The allegations in para 6 of the plaint " the passing of the order by the District Magistrate -------- is illegal and not binding on the plaintiff" are not correct and are denied.No cause of action has arisen to the plaintiff for filing the suit.The allegation in para 7 of the plaint are denied.

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10. The Enquiry was made by the Tenancy Awal Karkun into the deficit of 50 bags caused by the godown Keeper Shri M.K.Patted. The Tenancy Awal Karkun was competent to hold enquiry, he recorded evidence and gave full opportunities to Shri Patted to explain the deficit. No special procedure was prescribed for such enquiry. The enquiry was quite proper and it was not carried out in slip shod manner as alleged. Nor was the enquiry held by any incompetent person.

11. It was not necessary to hear Shri Patted's sureties(Plaintiff) in the courseof the departmental enquiry. The Collector's findings are based on a well considered report submitted by the Tenancy Awal Karkun. The report was by a competent Officer. The Collector's decision is therefore correct, legal and Binding on the plaintiff.

12. The liability of the plaintiff being co-extensive with that of the principal debtor Shri Patted, The Collector has rightly proceeded to recover the amount from the plaintiff. The Government can proceed to recover the amount from the plaintiff without first trying to recover eitherfrom Shri Patted or Plaintiff's Co-sureties. The plaintiff is in no way discharged from his liabilities and the proceedings against the plaintiff are not premature or illegal as alleged.

13. The order of the District Magistrate is legal and valid and does not offend against the principles of Justice and equity. It is not also unfair to the plaintiff. The order of the District Magistrate in the enquiry is binding on the plaintiff.

14. The suit of the plaintiff is not in time.

15. The orders passed by the Collector and District Magistrate are perfectly legal and valid.

16. All the allegations in the plaintiff which are inconsistent with or contrary to what is stated in this Written statement, are not true and are denied

The plaintiff's suit may therefore be dismissed with costs.

Assistant Government Pleader,
BIJAPUR.

I, J.R.Desai, Assistant Government Pleader, Bijapur, do hereby declare that what is stated in paras 1 to 16 above is true on information received and believed to be true. Signed at Bijapur on _____.

Assistant Government Pleader,
BIJAPUR.

1. Whether the plaintiff proves that the order passed by the District Deputy Collector on 18-8-1950 is illegal for the reasons, stated in the plaint ?

(2) Whether the suit time barred ?

(3) Whether the Plaintiff is entitled to the declaration sought ?

(4) What order ?

5-9-1953. Sd.

Civil Judge.Sr.Dn.

25 1/2

No. Cog 6 of 1954.
21-4-1954.

To

The Remembrancer of Legal Affairs,

Secretariat, Bombay No.1.

Subject:- Bijapur Civil Suit Nos. 264 and 265 of 1952.

Sir,

The above suits were fixed for hearing to-day. The pleader for plaintiff in Civil Suit No.265 of 1952 put in an application for amendment as per copy herewith attached. The suit thus stands adjourned for putting in our objections, if any

2. Reading the plaint as a whole and also the plaint inCivil Suit No.264 of 1952 it appears ~~that~~ as stated by the plaintiff in his application that it is really a clerical mistake. Hence I am of opinion that the amendment sought for may not be opposed.

3. In Paras 4 of the written-statements to these two suits the date 14-1-1952 is a mistake for 14-1-1950. Accordingly I have put in a Pursis in both the Suits as per copy herewith attached. I may also be permitted to put in applications for amending the date "from 14-1-1952" to "14-1-1950" in both the written-statements.

Yours faithfully,

12011
27/4/54

Asstt.Dist.Govt.Pleader,
Bijapur.

Submitted
'A' may not be opposed
'B' may be permitted

L D.
26 APR 1954

27/4

Solicitors 27/4

2514 63

Civil Suit No.265 of 1952.

In the Court of the Civil Judge,Sr.Dn.Bijapur.

1. Muttappa K.Pattad .... Plff.

Vs.

1. The State of Bombay. .... Deft.

Herein the plaintiff begs to state as follows:-

Through clerical mistake, the order dated 18-8-50 passed by the Collector and the District Magistrate, has been referred to as that of the District Deputy Collector, in Para 10(1) of the plaint. It is therefore prayed that in Para 10(1) of the plaint, the words" the District Deputy Collector" be deleted and the words" The District Magistrate" be inserted.

Bijapur.

Date:-20-4-1954. x x x x.

Sd. ~~G.R.Jahagirdar~~

Plff.

I, M.K.Pattad do hereby solemnly affirm that the foregoing is true to the best of my knowledge, information and belief.

Bijapur.

Date:- 21-4-1954. Sd. x x x.

Plaintiff.

Filed in Court on 21-4-1954.

Pleader for the plaintiff.

No. 11025/E

Office of the
Remembrancer of Legal Affairs,
Bombay Castle(Bombay No.1), 29th April 1954.

Subject:- Bijapur Civil Suits Nos.264 and 265 of 1952.

MEMORANDUM.

With reference to his letter No.496 dated the 21st April 1954 on the above subject, the Assistant Government Pleader, Bijapur is informed that the amendment sought may not be opposed. He is also informed that he is permitted to put in application for amending the date from'14-1-52' to '14-1-50' in both the written statements.

for Remembrancer of Legal Affairs.

To

The Assistant Government Pleader,
Bijapur.

Submitted for signature
29/4
SOL(M.T.)

Submitted after issue & Printed E.B

File in S. Bijapur/53

(New)

Tm
...2516

& Subdt. 2516

A Suits:

Bijapur.

For a declaration that the order passed by the District Magistrate and Collector directing recovery of Rs. 1,250 being the cost of 50 bags of jowar misappropriated by Shri Pated, from him and his sureties, as arrears of land revenue, is illegal and not binding on the plaintiffs, etc.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 23099/E.

Bombay Castle, 17th November 1953.

Letter from the Collector of Bijapur, dated the 22nd January 1953—Forwarding the papers in the suits noted in the margin and requesting sanction to their defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.
CIVIL SUIT NOS. 264 AND 265 OF 1952.
(1) Shivagondappa Honamallappa Hebballati
(2) Shri Mutappa Kalalappa Pated ... ... Plaintiffs;
versus
The State of Bombay ... ... Defendant.

Memorandum to the District Government Pleader, Bijapur, No. 13745/E, dated the 26th June 1953—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suits on the lines of the accompanying brief.

By order and in the name of the Governor of Bombay,

P. M. LAD,
Secretary to Government.

original. for

L Leg. H 278—1

[P.T.O.

To

*The Civil Supplies Department,
*The Collector of Bijapur,
The District Government Pleader, Bijapur (With two copies of the brief),

*With a copy of the brief.

No. 1953.

Copy forwarded for information and guidance to

31 73

BIJAPUR CIVIL SUITS NOS. 264 AND 265 OF 1952.

Chronological Statement of Facts.

Plaintiffs Shivagondappa Honamallappa Hebballatti and Shri Muttappa Kallappa Pated have filed these suits against the State of Bombay. The suits are for the following reliefs :

(1) For a declaration that the order passed by the District Magistrate and Collector directing recovery of Rs. 1,250 being the cost of 50 bags of jowar misappropriated by Shri Pated, from him and his sureties, as arrears of land revenue, is illegal and not binding on the plaintiffs.

(2) For costs of the suit.

2. Shri Muttappa Kallappa Pated (plaintiff in Civil Suit No. 265) was temporarily appointed as officiating Godown-Keeper by the District Magistrate, Bijapur, under his order No. CSEST. 640, dated 23rd July 1949. In paragraph 3 of the order it is directed that appointment of Shri M. K. Pated should be treated as purely temporary and terminable at any time, without any notice, and without any reason being assigned, and that an under taking in writing to that effect should be taken from him. The undertaking is not found in the papers of the case. It is presumed that the necessary undertaking has been taken. The District Government Pleader is requested to obtain the original or a copy thereof. On 27th July 1949 Shri Pated executed a bond under Financial Rule 40. Under the bond he and his sureties agreed that Government amount due from him can be recovered as arrears of land revenue dues.

3. On 5th September 1949 Shri M. K. Pated took charge of Huvin Hippargi Godown Centre from Shri S. B. Beradar. According to the "Charge Patti", he took charge of all grains in the pits (including that in pit No. 8). He has admitted in his statement during the enquiry that he did not ask Shri Biradar from whom he took charge to open the pits as he thought that the stock must be correct. It was open to him to actually verify the stock by opening the pits. He, therefore, took charge of the stock as per charge-patti and was accountable for that stock. The pit register of Huvin Hippargi shows that there were 195 bags of jowar in pit No. 8.

4. In view of the heavy rains in September 1949, the Mamlatdar issued orders to take the stock out of the pits. Unpitting operations were therefore started on 25th September 1949. Unpitting operation of pit No. 8 of Huvin Hippargi was started on 2nd October 1949 and completed after 2 or 3 days. In his report to the Mamlatdar about the results of unpitting operations Shri Pated reported regarding pit No. 8 as follows :—

(1) Total jowar	...	195 bags.
(2) Good grains obtained	...	93 bags.
(3) Spoilt grains	...	102 bags.

The date of the above-mentioned report is not stated nor a copy of it is found in the papers. The District Government Pleader is requested to obtain it from the Collector. It is presumed to have been submitted sometime before 12th October 1949.

sum as shall be deemed to be sufficient to cover any loss or damage which the Governor of Bombay may sustain by reason of such default.

And we agree that the Governor of Bombay, may without prejudice to any other rights of remedies of the Governor of Bombay, recover the said sum as an arrear of land revenue.

The loss of 50 bags of jowar is clearly established in the departmental enquiry to be due to the default of Shri Pated the principal for whom the plaintiff stood as surety. Under the terms of the bond, therefore, the plaintiff is co-extensively liable with Shri Pated to make good the amount of loss to the extent of Rs. 1,000. Government can therefore proceed to recover the amount from plaintiff without first trying to recover it from either the principal Shri Pated or plaintiff's co-surety. Plaintiff then contends that if the original defaulter gets a discharge, the plaintiff gets discharged. Circumstances in which a surety can get a discharge are mentioned in section 134 and section 135 of the Indian Contract Act. Under section 134 of that Act, the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. Section 135 of that Act provides that a contract between the creditor and the principal debtor by which the creditor makes a composition with or promises to give time to or not to sue the principal debtor discharges the surety; unless the surety assents to such contract. Shri Pated the principal who is responsible for the loss to Government of 50 bags of jowar is not in any way thus discharged. On the contrary the Collector under his order, dated 18th August 1950, held that Shri Pated has misappropriated 50 bags of jowar and that its cost of Rs. 1,250 should be recovered from him and his sureties as an arrear of land revenue. The plaintiff is not thus entitled to discharged. The proceedings against the plaintiff are not also premature or illegal as alleged.

5. Plaintiff finally contends that passing of the order by the District Magistrate behind the back of the surety and the original defaulter offends against the principles of justice and equity and the said order is unfair to the plaintiff and consequently not binding on him. These are mere repititions of the previous arguments. However these contentions are not true and should be denied. As pointed out above Shri Pated the defaulter was heard and given full opportunity to explain himself. It was not necessary to hear the sureties in the course of departmental proceedings. It should be denied that the said order was contrary to the principles of justice or equity or was either unfair to the plaintiff. The order is therefore binding on the plaintiff as surety of Shri Pated.

CIVIL SUIT No. 265 OF 1952.

6. Plaintiff Shri Pated alleges in paragraph 1 that it was the duty of the watchman to see that pits were not tampered with. The allegation that pits were tampered with is not true and should be denied.

Plaintiff then contends that the watchman is responsible for the shortage. This allegation is not true and should be denied. Liability for shortage of 50 bags was rightly fixed on the plaintiff who was in charge. In his first report (dated some time before 12th October 1949) the plaintiff stated that 102 bags were spoilt by moisture, and 93 were in good condition. In his subsequent report, dated 12th October 1949, he stated that 145 bags were in good condition and 50 were missing. After a proper enquiry the responsibility for the loss of 50 bags was properly fixed on the plaintiff who as godown-keeper was in charge of the grains and was bound to take proper care of it. Plaintiff also avers that the watchman had absconded. The District Government Pleader is requested to ascertain if this is a fact. It should be pointed out that the absconding of the watchman, even if true, will not help the plaintiff. Plaintiff's responsibilty for the loss was fixed after a thorough inquiry in the matter and after considering the plaintiff's statement. Plaintiff also avers in paragraph 1, that his services were terminated immediately, without a preliminary enquiry. This contention is considered in paragraph 7 below.

7. In paragraph 3 of the plaint the plaintiff contends that no regular enquiry was made either departmental or police and the proper procedure was not followed. Plaintiff therefore proceeds to contend that termination of his services was illegal and against the principles of natural justice and equity. These contentions are not true and should be denied. It is quite obvious from the order of plaintiff's appointment as godown-keeper (dated 19th July 1949) that the said appointment was purely temporary and terminable at any time without any notice and without any reasons being assigned. It is stated in that order that an undertaking to that effect should be taken from the plaintiff. A copy of the undertaking taken from the plaintiff is not found in the papers. It is presumed that an undertaking had been duly taken from the plaintiff. The District Government Pleader is requested to obtain a copy thereof from the Collector. On looking to the form in which such undertakings are usually taken it appears that it contains the following clause:

> "I understand that my employment under Government as.....is temporary and that my services may be dispensed with at any time without notice and without any reason being assigned."

There is no provision in the Bombay Civil Service Rules or the Bombay Civil Service Conduct Discipline and Appeal Rules which requires an enquiry to be held before the services of any temporary servant engaged on such terms as referred to above are terminated. Plaintiff was discharged from service in accordance with the terms of his contract. The discharge of the plaintiff therefore does not amount to removal or dismissal by way of punishment within the meaning of Rule 33 of the Bombay Civil Services, Conduct, Discipline and Appeal Rules (*vide* paragraph C of explanation below that Rule). It was not therefore necessary to hold any enquiry under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules. His services were

5. On 12th October 1949 Shri Pated submitted a report to the District Distribution Superintendent, Bijapur, together with a *panchanama,* dated 11th October 1949, stating that there was a deficit of 50 bags in pit No. 8. The District Distribution Superintendent submitted a report on 12th October 1949 to the Collector of Bijapur in the matter. On 13th October 1949 the District Magistrate and Collector, Bijapur, sent orders telegraphically to the Mamlatdar, Bagewadi, to discharge Shri Pated the godown-keeper at Havin-Hippargi and to entrust the case to police for inquiry and appoint a suitable substitute: On 14th January 1952 the District Superintendent of Police informed the District Magistrate, Bijapur, that he had submitted an "A" summary report on 25th December 1949 in the criminal case against Shri Pated. The District Magistrate therefore under his No. S.R. 131 dated 19th January 1950, directed the Mamlatdar to make a departmental inquiry and submit his report immediately.

6. The Mamlatdar caused the enquiry to be made through the Tenancy Aval Karkun, Bagewadi Taluka. The Tenancy Aval Karkun made detailed enquiries and submitted his report to the Mamlatdar on 14th February 1950. The Mamlatdar agreed with the findings of the Tenancy Aval Karkun and submitted the report to the Collector on 18th February 1950 for final orders.

7. The Collector under his order No. 131, dated 18th August 1950, held for reasons stated in the order, held that the Godown-keeper Shri G. R. Pated had misappropriated 50 bags of jowar and their cost of Rs. 1,250 should be recovered from him or his sureties as arrears of land revenue. Accordingly the Mamlatdar of Bijapur issued notices of demand both on Shri Pated and his two sureties and the notices were served on them on 15th September 1950. They failed to pay the amount within the period of 3 days specified in the notices. It was found that Shri Pated and one of his sureties Shri Mathapati possessed no moveable or immoveable property. Shri Shivagoundappa H. Heblalatti the other surety possessed immoveable property. The Mamlatdar therefore proceeded to recover the amount by attachment and sale of the said immovable property. The District Government Pleader is requested to ascertain the date of order of sale. In the meanwhile both Shri Pated and Shri Hebbalhatti submitted applications to the Collector for staying the sale proceedings on the ground that Shri Pated had submitted an appeal petition to Government in Civil Supplies Department against the order passed by the Collector. On 7th March 1952 the Government informed the Collector that there was no objection to proceed with the recovery of the amount from the sureties.

8. Plaintiffs gave notices of suit on 5th May 1952 and filed these suits on 14th August 1952 for reliefs shown in paragraph 1 above.

Grounds of Defence.

CIVIL SUIT No. 264 OF 1952.

Plaintiff, Shri Hebbalhatti contends in paragraph 2 of the plaint that the inquiry into the alleged shortage of 50 bags was made by incompetent persons and

was illegal as it was contrary to rules laid down by Government for the purpose. These contentions are not true and should be denied. The inquiry was made by the Tenancy Aval Karkun into the deficit of 50 bags in pit No. 8. No special proceedure has been prescribed for such inquiries. The Tenancy Aval Karkun recorded evidence and gave full opportunity to Shri Pated to explain the deficit. The enquiry was quite proper and it was not carried out in a slip-shod manner as alleged. Nor was the inquiry held by any incompetent person.

2. In paragraph 3 the plaintiff refers to the Criminal complaint and the "A" summary report submitted by the Police for want of evidence and contends that no responsibility for loss was thus proved against Shri Pated. This contention is misconceived. In the first place no criminal case was filed in any Court. Even had a criminal case been filed and Shri Pated been acquitted that result would not have been relevant to a departmental inquiry for the purpose of fixing the responsibility for loss to Government of the 50 bags of jowar.

3. It is further contended in paragraphs 3 and 4 that a slipshod enquiry was made behind the back of Shri Pated's sureties and therefore the Collector's findings that Shri Pated was responsible for the loss are illegal and wrong. It should be pointed out that it was not necessary to hear Shri Pated's sureties in the course of the departmental enquiry. The Collector's findings are based on a well considered report submitted by the Tenancy Aval Karkun. The Aval Karkun made a thorough enquiry after recording evidence and giving Shri Pated an opportunity to explain the deficit. It was not a report by any incompetent officer as wrongly alleged. The Collector's decision is therefore quite correct, and legal. The Collector's order is therefore binding on the plaintiffs.

4. Plaintiff's contentions in paragraph 5 are as follows :—

> The liability of the plaintiff arises only if and when the original defaulter fails to pay or it is found impossible to recover from him the amount. If the original defaulter gets discharged the surety is entitled to a discharge from the liability. The proceedings against the plaintiff are premature and illegal.

These contensions are not true and should be denied. Section 128 of the Indian Contract Act provides that the liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract. The liability of the surty is thus joint and several and a creditor is not bound to exhaust his remedies against the principal debtor before proceeding against the surety. Paragraphs 1 and 2 of the surety bond executed by the plaintiff along with his co-surety are to the following effect :—

> We, Madiwalayya Kallayya Muthapati and Shivagoundappa Honamallappa Hebbalhatti hereby declare ourselves sureties for the said Mr. M. K. Pated that he shall do and perform all that he has above undertaken to do and perform and in case of his default therein, we hereby bind ourselves jointly and severally to forfeit to the Governor of Bombay the sum of Rs. 1,000 in which lesser

terminated in terms of the undertaking signed by him as they were no longer required. The order passed in the matter is quite proper and principles of equity and natural justice have no relevance here and have not been contravened. The Collector telegraphically directed on 13th October 1949 the Mamlatdar to terminate plaintiff's services and the Mamlatdar accordingly passed the necessary orders without giving any reason.

8. In paragraph 4 the plaintiff states that his suit is for reinstatement in his former post. Plaintiff has not prayed for any such relief in the prayer clause nor has he valued the suit for such a declaration not paid the requisite court fees for the purpose. Plaintiff is not therefore entitled to any declaration regarding termination of his service and reinstatement in service.

9. Contentions raised by the plaintiff about the enquiry into the loss of 50 bags of jowar being illegal and *ultra vires* are not true and should be denied. The plaintiff alleges that the District Magistrate did not follow the rules of such an inquiry. It should be urged that no special procedure is prescribed or rules laid down for such an inquiry. The inquiry was however made by following the usual procedure. Evidence was recorded and plaintiff's explanation was also taken. It is also alleged that the inquiry was allowed to be made by an incompetent person. The inquiry was made by the Tenancy Aval Karkun who was quite a competent officer to make enquiry into the loss of 50 bags caused to Government. The District Government Pleader is requested to ascertain from the Collector whether statements of witnesses were recorded in the presence of Shri Pated and whether he was given any opportunity to cross-examine them. It should be urged that it was not necessary to do so. Plaintiff was given an opportunity to explain himself. The purpose of the inquiry was to fix the responsibility for the loss of the 50 bags. The enquiry was thus quite legal and proper.

10. For all the reasons stated above it should be urged that the suits fail and should be dismissed with costs.

1253

No. 1275 of 1954. 9174
D.G.P.'s office, Bijapur.
11-10-1954.

From

Shri A.C. Angadi B.A.LL.B.,
District Government pleader,
Bijapur.

To

The Collector of Bijapur (Supply).

Subject:- Bijapur Civil Suit No. 264 and 265 of 1952.
(Shri M.K.Patted - plff in C.S.No. 265/52. Shri Shivgondappa Honmallappa Hebbalhatti - plff in C.S.No.264/52)

Sir,

Judgments in both the above suits were delivered to-day.

The Court dismissed Civil Suit No.265/1952 and ordered the parties to bear their own costs.

As regards C.S.No. 264/1952 the order of the Court is to the effect that the suit is dismissed, that the parties are to bear their own costs, and that it is declared that the defendant (the State of Bombay) is not entitled to recover more than Rs 1000/- from the plff in respect of the shortage of 50 bags of jawar in Pit No.8 at Huvin Hippargi.

Sub No. 29649/ 14/10/54

(2) The plff in C.S.No. 264/1952 was a surety to the extent of Rs 1000/-. Hence I am of opinion that the decision of the Civil Court should be acquiesced in and not appealed against.

Hence if my view is to be accepted, recovery proceeding for Rs 1000/- only should be undertaken instead of for Rs 1250/-.

(3) I will obtain the certified and uncertified copies of Judgment and decree and send them to you after obtaining them from Court.

The period of limitation for filing an appeal is 30 days from the date of the judgment exclusive of the time requisite for obtaining certified copies of Judgment and decree.

(4) Files Nos. I,II,III,IV and V are sent to you herewith.

Yours faithfully,

Sd.A.C.Angadi.

Dist.Govt.Pleader,Bijapur.

No. 1276 of 1954.
11-10-1954.

L.D. 14 OCT 1954

Copy respectfully forwarded to the Remembrancer of Legal Affairs,Secretariat Bombay. Uncertified copy of the Judgment will be obtained and will be duly submitted to you.

Ahmad

District Govt.Pleaddr,Bijapur.

39.55

Received on 14-8-1952.
Registered on 19-9-1952.
Decided on 11-10-1954.
Duration 22-0-2.

In the Court of the Civil Judge, Sr.Dn.,
At Bijapur.

Exh. 27.

Pleaders.

Regular Civil Suit No. 264 of 1952.

Shri G.R.Jahagirdar. (1) Shivagondappa Honmallappa Hebbal-
-hatti of Honnutagi, taluka Bijapur. Plaintiff.

against.

Shri J.R.Desai. (1) The State of Bombay. Defendant.

Claim Rs. 205/-

The plaintiff sues to obtain a declara tion that the order, passed by the Collector and the District Magistrate on 18-8-1950 relying on the report of the plaintiff and that the order of putting the land of the plaintiff to sale was also illegal. He also sues for an injunction restraining the District Magistrate and Collector not to hold a sale of plaintiff's property. He prays for his costs.

2. The facts of the case may briefly be stated as follows:-

The plaintiff is one of the sureties under the bond to one Shri M.K.Patted, a godown keeper at Huvvin hippargi. Shri M.K.Patted had been

appointed as a Godown Keeper in 1949 and he had stood surety to the extent of Rs. 1000/-. It was alleged by the def ndant that there was a loss of 50 bags of jowar on account of shortage in pit No.8, of Huvvin Hippargi. It appears that the Government started hap-hazard enquiry on the report about the shortage of grain without following the proper procedure according to law. No responsibility for the loss was duly proved against Shri Patted in a regular enquiry. The Collector 's finding that Shri Patted was responsible for the loss was illegal and wrong, as he based his finding on the report of the officer, who was legally incompetent to conduct the enquiry. Such an enquiry was held behind the back of the plaintiff and it was, therefore, illegal and ultra vires. The District Magistrate was not competent to put the plaintiff's property to sale on account of the said alleged loss. The plaintiff is not at all liable for the said loss, in view of the terms of the surety bond itself. Hence, the suit for a declaration, injunction etc., after giving notice under section 80 of the Civil Procedure Code.

3. The defendant in its written statement, Ex.13 stated that the plaintiff was one of the sureties for Shri M.K.Patted and that he had agreed to forfeit the amount of any loss, defalcation or damage caused to the defendant from Shri Patted. It stated that Patted had taken charge of the godown and the pits at Huvvinhippargi on 6-9-1949 and that there were 195 bags in pit No.8, when he took charge of it. It stated that unpitting operations of pit No.8 was made in September 1949 and Shri Patted reported then that there were 195 bags in it. But on 12-10-1949, the said Shri Patted informed the Mamlatdar that 50 bags in pit No.8 were missing. Ot statpd tjat tje ,atter jad neem emtristed tp tje /p;oce fpr enquiry and it submitted 'A' summary to the District Magistrate on 14-1-1950. It further stated that the District Magistrate directed the Mamlatdar to hold departmental enquiry

and the latter caused the enquiry to be made through the Tenancy Aval Karkun ~~as correct~~ and accepted the findings of the Aval Karkun as correct. It was found out that Shri Patted was responsible for the loss of 50 bags worth Rs. 1250/-. It stated that the order of the District Magistrate fixing the responsibility for the loss on Shri Patted was proper and legal and that the plaintiff was, therefore, liable to make good the loss. It denied the allegation of the plaintiff made in paras to 4 of the plaint. In a word, it supported the order of the District Magistate as legal and valid in every respect. It contended that the suit was time-barred. It prayed for its costs.

4. The following issues were framed at Ex.15:-

(1) Whether the plaintiff proves that the order, passed by the Collector and District Magistrate is illegal and not binding on the former and that the Collector has no right to attach and sell plaintiff's property, for the reasons, given in the plaint ?

(2) Whether the suit is time-barred ?

(3) Whether the plaintiff is entitled to the declarations sought and the injunction claimed ?

(4) What decree ?

5. My findings on issue No.

(1) 1st part No; 2nd part No.

(2) Does not survive; suit is in time.

(3) No; no.

(4) As per final order.

Reasons.

6. This suit and the Suit No.265 of 19 e heard together and the evidence was recorded

the said suit, after receiving the pursis, Exh.34 in that suit. For the reasons given in the said companion suit, I record my findings on these issues also accordingly and pass the following order.

O R D E R .

The plaintiff's suit is dismissed. The parties do bear their own costs. It is, however, declared that the defendant is not entitled to recover more than Rs.1000/-. from the plaintiff in respect of the shortage of 50 bags of jowar in pit No. 8 at Huvinhippargi.

Sd. M.H.Kazi

11th October,1954. Civil Judge, (Sr-Dn.,)

4; 59

Received on 14-8-1952.
Registered on 19-9-1952.
Decided on 11-10-1954.
Duration 22-0-2

IN THE COURT OF THE CIVIL JUDGE SR.DN.
AT BIJAPUR. Exh. 73.
Regular Civil Suit No. 265 of 1952.

Pl[illegible]ders.

Shri G.R.Jahagirdar. 1. Muttappa Kallappa Pattad of Honnutagi taluka Bijapur .... Plaintiff.

against.

Shri J.R.Desai. 1. The State of Bombay. .... Defendant.

Claim Rs. 200/-

Plaintiff sues to obtain a declaration that the order passed by the District Magistrate on 18-8-1950 was illegal. He prays for his costs.

2. The plaintiff states in his plaint briefly as follows:- The plaintiff was working as Godown Keeper at Huvin-hippargi in 1949-50. During September 1949, there was a heavy rain in that village and it caused damage to the grain pits due to percolation of water. The plaintiff was in charge of the grain pits and the godown in that village, but it was the duty of the watchman to keep a watch over those pits,. It was alleged by the defendant on un-pitting the grain pit No.8, that there was a shortage of the stock by 50 bags of jowar for which the plaintiff was not at all responsible. Without any preliminary enquiry the plaintiff was immediately discharged from his service. The Aval Karkun, who was

not competent to hold the enquiry, held an inquiry in slip shod manner and lodged the complainant against the plaintiff for mis-appropriation etc., with the Police, but it ended in an summary, The watchman was absconding at that time and it is learnt that he was not even examined by the defendant. No regular inquiry was held in the case and no procedure was also followed before terminating the service of the plaintiff. The action taken against the plaintiff was, therefore illegal. The District Magistrate came to the conclusion that the plaintiff was responsible for the loss occurred in godown No.8, without holding an inquiry in the presence of the plaintiff. The plaintiff is, therefore , not at all responsible for any loss. Hence, the suit after serving the notice under Secion 80 of the Civil Procedure Code.

3. The defendant in its written statement, Ex.13 stated that the plaintiff had been appointed temporarily as officiating godown keeper and that he was liable to be removed at any time without any notice. It stated that the unpitting operations of pit No.8 was made on account of the rain and it was found out that out of 195 bags kept in pit No.8, some 50 bags of jowar were missing from it. The plaintiff submitted his report that there was a deficit of 50 bags of jowar in pit No.8 and the matter was entrusted to the police for enquiry. Then, after receiving an summary from the District Superintendent of Police, a departmental enquiry was held by the Mamlatdar through the Tenancy Aval Karkun. It stated that the Mamlatdar came to the conclusion that 50 bags of jowar had been mis-appropriated by the plaintiff and the cost of the same was Rs. 1250/-. It denied the eplaintiff 's allegation that heavy rain caused perculation of water and that the watchman was responsible for the loss. It stated that the plaintiff was responsible for the safety of the grain kept under his charge and that he was also responsible to make good the loss. It supported the order of the District

Magistrate and stated that it was legal and valid. It denied the allegation of the plaintiff that the proper procedure was not followed and that the plaintiff was not given any opportunity. It contended that the notice served under section 80 of the Civil Procedure Code was time-barred. It prayed for its costs.

1. The following issues were framed at Ex.15:-

(1) Whether the plaintiff proves that the order passed by the District Magistrate on 18-8-1950 is illegal for the reasons stated in the plaint ?

(2) Whether the suit is time-barred ?

(3) Whether the plaintiff is entitled to the declaration sought ?

(4) What decree ?

5. My findings on issue No.

(1) No.

(2) Does not survive. Suit is in time.

(3) No.

(4) As per final order

Reasons.

6. Issues Nos. 1 to 3: The plaintiff was appointed as a godown keeper at Bijapur on 23-7-1949 and he had furnished security to the extent of Rs.1000/- The plaintiff in Civil Suit No.264 of 1952 and another were sureties for the present plaintiff. The plaintiff was then transferred to Huvinhippargi as a godown keeper in September 1949 and he took charge of that office on 5-9-1949. His report, Ex.36 and charge pattis Exs. 37 and 38 are clear on the point. It can be seen from these charge pattis that there were 14 grain pits under his charge in addition to a godown and that 195 bags of jowar had been stored in pit No.8. It appears

that there was some heavy rain in the said village during 3rd or 4th week of September. The Mamlatdar of Bagewadi sent the order to the plaintiff to open the pits and take necessary steps to keep the grain in good condition by exposing it to the sun shine, if necessary. The plaintiff accordingly started uppitting operation from 25-9-1949 or from 1st or 2nd of October 1949. I shall discuss about the exact date of the commencement of unpitting operation, later. Ex.39 is the report sent by the plaintiff to the Mamlatdar 's office on 4-10-1949 and it gives the idea of the affected grain in some of those pits. The total number of bags stored in all those 14 grain pits was 1199 bags as per registers and charge Pattis and the same number is shown in the report Ex.39 also. The plaintiff sorted the grain of the affected pits and stated at the report Ex.39 that in pit No.8 out of 195 bags of jowar, some 102 bags had been spoiled by pit moisture or by floods.

7. Then the plaintiff prepared the second report Ex.64 on 11-10-1949 and handed it over to the Awal Karkun, Ex.48, who had come to the village Huvvinhippargi along with the D.D.S. for inspection of the godowns. As the distance between Huvvinhippargi and Bagewadi is about six miles, both those officers (D.D.S. and Aval Karkun) returned to Bagewadi the same night. In the said report Ex. 64, the plaintiff had stated that 50 bags of jowar were found short in the pit No.8. The D.D.S. suspected the bona fides of the plaintiff and sent the report, Ex.57 on the very night to the District Magistrate and the Collector. The Mamlatdar had also visited Huvvinhippargi on 7-10-1949 and the plaintiff had not informed the former about any shortage of grain in any of those godowns. On the receipt of Ex.57, the District Magistrate immediately sent the telegram, Ex. 59 on 13-10-1949 to the Mamlatdar asking him to discharge the plaintiff from his service. In the meanwhile, on the very day (i.e.13-10-1949),

the Mamlatdar had asked the Aval Karkun to hold a detailed inquiry about the cause of shortage of 50 bags in pit No.8. After the receipt of the telegram, Ex.59 on 15-10-1949, the Mamlatdar sent the order, Ex.60 to the Aval Karkun to discharge the plaintiff from the service. The Aval Karkun accordingly discharged the plaintiff from his service.

8. The Aval Karkun in the course of holding the detailed inquiry in respect of the shortage of 50 bags asked the plaintiff to give his explanation. The plaintiff gave his explanation in writing Ex.62 on 17-10-1949. The Aval Karkun, however, again examined the plaintiff and recorded his statement on 19-10-1949, Ex.65 The plaintiff stated before the Aval Karkun then that he had started the unpitting operations of the pits from 25-9-1949 and that pit No.8 was opened or unpitted on 2-10-1949. He also stated then that the sorting and bagging operation lasted for 2-3- days. A complaint was lodged against the plaintiff and the watchman before the Police, Ex.52. The police held the inquiry and found/that no evidence was available to proceed with the complaint against the plaintiff and the watchman. Accordingly 'A' summary, Ex.53 was issued. The Aval Karkun, who was holding the enquiry, reported at Ex.63 that the plaintiff and the watchman were responsible for the loss. The Mamlatdar agreed with the Aval Karkun and forwarded the report of the Aval Karkun with the endorsement to the District Magistrate. The District Magistrate then passed the final order, Ex.42, on 18-10-1950. The plaintiff had made the application, Ex.54 to the District Magistrate to reconsider his case, but it was rejected. The plaintiff then sent the notice of suit, Ex.51 to the defendant and filed the present suit. The surety also sent the similar notice to the defendant and filed the companion Suit No 264 of 1952. The other surety has not come to the Court.So

far the parties are not in dispute.

9. The learned pleader for the plaintiff argued that as the Aval Karkun was not competent to hold the inquiry and as no opportunity was given to the plaintiff to lead evidence in that inquiry, the District Magistrate's order passed on 18-10-1950 was illegal and invalid. In the plaint the plaintiff had contended that the order of discharge passed by the Collector was wrong and that he was entitled to be reinstated. But he subsequently gave up that prayer as he had been appointed in the first instance as the temporary servant, liable to be discharged from the service at any time without assigning any reason and without giving any notice to the plaintiff. It is probable for these reasons that the plaintiff did not insist on seeking this relief. His only prayer at present is that the order Ex.42 passed by the District Magistrate on 18-10-1950 should be declared was illegal. His object in getting such a declaration is probably to escape the liability to pay the price of 50 bags which were found short in pit No.8. His surety also desires the same thing in the companion suit.

10. From all the statements of the plaintiffs, Exhs. 65, 62 and 55, it can be said that he started the unpitting operation of the pits on 25-9-1949 and reached the pit No.8 for the purpose on the 1st of 2nd of October 1949. According to the plaintiff, the whole work lasted for about 8-10- days. It can, therefore, be said that he had the approximate idea of the quantity and condition of grain of all the pits by 4-10-1949. The plaintiff sent the statement Ex. 39 to the Mamlatdar on 4-10-1949 giving the full details of the condition and quantity of grain in all the pits. The total quantity of grain shown in this statement, Ex. 39 tallies with that shown in the register and the charge pattis. The plaintiff stated that he filed the statement, Ex. 39 without

actually measuring or weighing the grain, believing that the quantity in every pit might tally with that stated in the register of the charge pattis. It was a mistake on his part to send the report, Ex.39 without first sorting and rebagging the grain, as he had not measured it while taking charge of the pits. However, let me see how far the plaintiff's explanation now given is true. From the report of the D.D.S., Ex. 57, which was made on the very day of the receipt of the statement of the plaintiff, Ex.64, it can be said that the Mamlatdar had visited Huvvinhippargi on 7-10-1949. The plaintiff did not inform the Mamlatdar then about the alleged shortage or any shortage in pit No.8. He did not also inform the Mamlatdar on or before 11-10-1949 about the shortage, though he had prepared the statement, Ex.64 on 11-10-1949 and though the distance from Huvvinhippargi to Bagewadi was only six miles. But he gave the report, Ex.64 on 12-10-1949 when the D.D.S. and the Aval Karkun arrived at Huvvinhippargi casually for inspection.

11. In the first place, it is for the plaintiff to prove that sorting and rebagging process was not over till 11-10-1949. There is nobody to corroborate the plaintiff in this respect. He does not himself clearly say that it was not possible for him to detect the shortage till 11-10-1949. He could have examined atleast one of the panchas who had marked the alleged shortage. He did not go to Mamlatdar's office at least on 11-10-1949 and inform the Mamlatdar about the shortage, especially when he knew that he had sent the report Ex. 39 on 4-10-1949, alleging that there was no shortage of grain in any of the pits. It is obvious from the report, Ex. 57 that the D.D.S. and Aval Karkun had gone to Huvvinhippargi casually on 12-10-49 The plaintiff did not offer the present explanation in the report, Ex.64 and he did not even care to refer to his former report, Ex.39. As stated above, it can be made out

from the report, Ex. 64 itself that it was prepared on 11-10-1949 and that he was aware of the alleged shortage prior to that date. If the plaintiff were really innocent, he could have hurriedly run to the Mamlatdar on the 11th of October itself and informed the shortage, explaining that he had committed a mistake in sending the report, Ex.39 without measuring the corn. The plaintiff's above-mentioned conduct in this connection appears to be suspicious. Moreover, there is no evidence to support his present explanation or the report, Ex.64. I, therefore disbelieve the plaintiff and hold that the plaintiff has not been able to prove the allegation that the shortage was detected by him for the first time on 11-10-1949.

12. The learned pleader for the plaintiff argued that it was the duty of the defendant to prove that 195 bags of jowar were existing in pit No.8 on the date of plaintiff's taking charge of the pits. But the learned pleader should note that the plaintiff admitted the existence of so much quantity in pit No.8 in his charge Pattis, Exs. 37 and 38. He should also note that the plaintiff informed the Mamlatdar on 4-10-1949 by Ex.39 that the said quantity was existing in that pit on that day. Not sending the report of shortage early after the 1st or 2nd October 1949 and not examining the panch or a witness to speak about the alleged shortage after unpitting the grain, will go to show that the pit No.8 contained 195 bags of jowar when the plaintiff took charge of it. The learned pleader for the plaintiff next suggested that some quantity of grain might have been damaged or spoiled on account of the pit moisture or dryage, etc. One may concede that in some cases some shortage may occur on account of one of such causes. But such a presumption cannot be drawn in the present case in view of the fact that there was no shortage in other pits according to the plaintiff himself, though they were situated in the same village and though some of them had also been affected by flood water. The learned

pleader for the plaintiff also argued that the watchman or somebody might have removed those 50 bags of jowar from the pit No.8 and that there was no evidence against the plaintiff to show that he removed them. It is possible that some person or a thief might remove those 50 bags from the pit No.8 which was situated outside the village area. But the plaintiff could have marked the sign of opening of the pit No.8 and reported the matter to the Mamlatdar, if it had been really opened during the night. It is however possible that the plaintiff himself did not remove those 50 bags. But he is negligent in discharging his duties from the date of unpitting of the grain till the date of sending the report, Ex.64. If he had taken proper care after exposing the grain to the sun for 2-3 days, I do not think that such a shortage could have occurred. The Police also could not trace the real culprit during the enquiry. The learned pleader for the plaintiff stated that under the rules it was not the duty of the plaintiff (godown keeper) to keep the watch over all the pits day and night. It is true that it was not necessary for the plaintiff to keep a watch like a watchman, but it was his duty to supervise the work of the watchman and also inspect those pits now and then. He ought to have inspected the outward condition of the pits occasionally at least once in a day. If any pit had been opened during night, the plaintiff could have easily detected the unpitting of pit No.8 the very next day, if he had taken such a round. He did not mark any sign of unpitting of any of the pits from their outward appearance till he opened the pits. His statement, Ex.64 does not state that he had marked some defect at the mouth of pit No.8. On the other hand, he simply states at Ex. 64 that he did not find the pit No.8 completely filled up with grain, when he opened it. This fact also was not reported to the Mamlatdar on the 1st or 2nd or on the 7th of October 1949. From all these facts and the

circumstances of the case, it appears that 50 bags were probably removed after the unpitting of grain or before the plaintiff took charge of the pits. But the plaintiff was negligent in his duties from the date of taking charge of the godown and the pits till the date of handing over the report Ex.64. He is negligent in not informing the Mamlatdar immediately after the detection of the shortage. He is negligent in not supervising the work of the watchman and inspecting the pits occasionally. He is also negligent in not examining some witness to corroborate his present expelanation. For his negligence nobody else is to blame, but himself. There was no necessity of any regular inquiry to be held in the case. It was the duty of the plaintiff to return the quantity of grain which he took charge from the defendant as per charge pattis and register. He did not do so. He did not prove that he was not responsible for the loss for some reason or the other, either before the District Magistrate or his subordinates or even before me. The District Magistrate considered the report of the Aval Karkun and the Mamlatdar and came to the conclusion that the defendant did not explain the shortage satisfactorily. I too find that the plaintiff has not been able to throw the blame on some one else. This is not a criminal case to presume that the plaintiff is innocent. If the plaintiff had prayed that the order of discharge passed by the District Magistrate was wrong, I would have considered whether the inquiry was by the District Magistrate was proper or improper. In the present case, the District Magistrate deputed the Mamlatdar to hold the inquiry and he was perfectly justified in doing so. The Mamlatdar also in his turn asked his Aval Karkun to do that work and there was no irregularity or illegality in instructing the Aval Karkun to hold the inquiry. The Aval Karkun was only to make a departmental enquiry if the plaintiff was responsible for the loss of grain and he came to the conclusion that the plaintiff was responsible for the said loss. For these

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reasons I come to the conclusion that the plaintiff has not been able to show that the order passed by the District Magistrate is wrong, or invalid, or illegal.

13. The plaintiff in Civil Suit No.264 of 1952 is, as stated above, one of the sureties. He and the other surety jointly executed the surety bond, agreeing to make good the loss caused to the defendant on account of the default, negligence, etc. of the plaintiff. The plaintiff is held to be liable to make good the loss caused to the defendant. The sureties will have, therefore, to pay the loss to the extent of that amount of Rs. 1000/-. The learned pleader for the surety argued that the defendant ought not to have transferred the plaintiff in this suit to Huvvinhippargi that the defendant's action to transfer the plaintiff to that place was improper and illegal and that the sureties were, therefore, not liable to make good the loss. I am unable to agree with the learned argument of the learned pleader in this respect. If the plaintiff (the surety) was not sure of the plaintiff's conduct in Huvvinhippargi, the former ought to have got his surety bond cancelled before the defalcation or loss was caused to the defendant on account of negligence, or conduct of the plaintiff. The learned pleader for the surety also argued that the sureties were responsible to pay only Rs.1000/-. I do agree with the learned pleader in this respect and direct the defendant not to recover more than Rs.1000/- from the plaintiff in Civil Suit No.264 of 1952.

14. The learned pleader for the defendant argue-d that the suit was time-barred under article 14 of the Indian Limitation Act as it had not been filed within one year from the date of the District Magistrate's order. The order, Ex. 42 was passed by the District Magistrate on 18-10-1950 and the plaintiff sent the

notice of suit to the defendant on 5-5-1952 and filed the suit actually on 14-8-1952. If the said article 14 were applicable in the present case, the suit would have been barred by time. But the plaintiff claims in the suit that the said order was a nullity or invalid. In that case the said Article does not apply at all. As the plaintiffs have not been successful in their suits on merits, there is no necessity to discuss about the limitation point in detail and it does not survive now. I accordingly record my finding on all the issues in both these suits accordingly and pass the following order.

15. In view of the peculiar circumstances of the case, I award no costs to the parties.

Order.

The plaintiffs suit stands dismissed. The parties do bear their own costs.

11th October 1954. Sd. M.H.Kazi,
Civil Judge, (Sr.Dn).

55 XDL

No. 1345 of 1954.
21-10-1954.

To

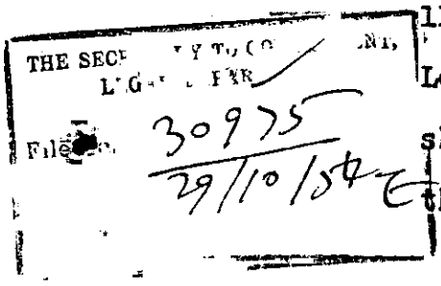
The Collector of Bijapur(Supply),Bijapur.

Subject:- Bijapur Civil Suits Nos. 264 & 265/1952
(Shri M.K.Patted Plff in C.S.No.265/52)
(Shri Shivgondappa plff in C.S.No.264/52)

Sir,

In continuation of my No. 1275 of 11-10-1954 informing you of the decisions of these suits and in continuation of this office No. 1334 of 19-10-1954 forwarding to you uncertified copies of Judgment, I have the honour to state that I received certified copies of Judgments and decrees in both the suits to-day, and I have sent them herewith to you. I have also sent herewith uncertified copies of the two decrees.

(2) For reasons stated by me in Para 2 of my report No. 1275 of 11-10-1954, I am of opinion that the decisions in the two suits should be acquiesced in and not appealed against.



(3) I request you to forward my report No. 1275 of 11-10-1954 as also this report to the Remembrancer of Legal Affairs with your opinion as to whether appeals should be preferred or not (please vide Rule 132 of the Rules for the Conduct of Legal Affairs of Govt).

(4) The period of Limitation for filing appeals if any, would expire on 20-11-1954(The Judgment was delivered on 11-10-1954. Copies were applied for on the same day. They were ready and delivered on 21-10-1954).

Yours faithfully,

Sd.A.C.Angadi.
Dist.Govt.Pleader,Bijapur.

No. 1350 of 1954.
21-10-1954.

Copy respectfully forwarded to the Remembrancer of Legal Affairs, Secretariat Bombay, in accordance with Rules 129 and 130 and 131 of the Rules for the Conduct of the Legal Affairs of Government.

A Angadi

Dist.Govt.Pleader,Bijapur.

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Decree.

In the Court of the Civil Judge Sr.Dn.,

Bijapur.

Civil Suit No. 254 of 1952.

1. Shivagondappa Ponmallappa Hebbal-hatti, Lingayat, SO, Agriculture Honutagi, taluka Bijapur ..... Plaintiff.

vs.

1. The State of Bombay Defendant.

Claim Rs. 205/-

Suit filed on 14-8-1952.

Suit registered on 19-8-1952.

The plaintiff is one of the sureties under the Bond to the H.F.Patted, a godown keeper at Huvin-hipparagi. The plaintiff is ready and willing to act up to the terms of the bond. If Shri H.F.Patted is legally found responsible for the same. The plaintiff's suit is for declaration and injunction, that he is not liable to pay any amount.

2. The go-down keeper Shri H.K.Pattad was appointed a godown keeper in 1949, and for him the present plaintiff stood surety to the extent of Rs.1000/ In fact, there are two sureties. It was alleged by the Government that there was a loss of 50 bags of jowar, as there was a shortage to that extent detected after the emptting pit No.8 of Huvin hipparagi where Shri Pattad's posting had been made. On the report of the shortage it appears Government started hap-hazard

equi

enquiry. The inquiry was conducted in an illegal manner by incompetent persons and by not following the procedure as laid down by the rules by the Government for the purposes.

The Government did not stop there, they filed a regular complaint against him Shri Pattad and after an irregular enquiry the officers concerned in order to shield incompetency and illegality and their faces brought about the report from the police papers.'A' summary report. So, no responsibility for the loss was duly proved against Shri M.K.Pattad for whom the plaintiff stood surety. A slip shod enquiry was made and they fixed the responsibility on Shri M.K.Pattad behind his back and that of the sureties. So proper procedure was followed and even the sureties were not informed of the inquiry or the investigation. So, the Collector's finding that Mr.M.K.Pattad was responsible for the loss was illegal and wrong as he based his finding on the report of the officer who was legally incompetent to conduct such an inquiry departmental or any other.

4. As the fixing up of the responsibility was done behind the back of the plaintiff, the finding is both illegal and ultravires and such fiding is not binding on the plaintiff.

5. The District Magistrate in pursuance of his order dated 18-6-1960, has proceeded with the sale of the immoveable property S.No. of Uramal belonging to the plaintiff. The sale was fixed on 13-9-1965 for the alleged loss of Rs.1250/- caused by Shri M.K.Pattad. The plaintiff is not bound to abide by the decision of the District Magistrate in this behalf. plaintiff further alleges that the order of the District Magistrate, in putting up the land of the plaintiff to sale acted illegally as he ignored the terms and the conditions of the surety bond. The liability of the plaintiff arises only if and when the original defaulter, fails to pay or it was found impossible to recover from him. If the original defaulter gets discharge, the surety is entitled to a discharge from the liability. The proceedings against the plaintiff are premature and illegal.

6. The passing of the order by the District Magistrate behind the back of the surety and the original defaulter offends against the principles of justice, and equity and unfair to the plaintiff and such an order is illegal and not binding on the plaintiff.

7. The cause of action arose, when the plaintiff's property was put up for sale i.e. on 23-8-1952.

8. The plaintiff resides within the jurisdiction of this Co rt; the cause of action arose within the jurisdiction of this Court. The property sought to be sold in the attempt of recovery of the alleged loss to Government is situated within the jurisdiction of this Court. Hence, this Court is competent to try this suit.

9. The requisite legal notice is given as per Sec.80 of the Civil Procedure Code of 1908 and was served on the defendant in May 1952.

10. The suit is for declaration that the order passed by the District Magistrate on 18-8-1950 is illegal and further that the order passed by the Collector in virtue of which the property was put up to sale on 23-8-1952 is illegal. The Suit is also for injunction and hold the sale in pursuance of that order. The Court fees are paid on Rs. 205/- for the purpose of the jurisdiction and also for pleader 's fees is the same.

11. The plaintiff prays:

(i) It should be declared that the order passed by the Collector and the District Magistrate on 15-8-1950 relying on the report of the Officer, incompetent to make the report and inquiry is illegal and not binding on the plaintiff and that the order of putting the land of the plaintiff to sale is also illegal.

(ii) For an injunction against the District Magistrate and Collector not to hold a sale of the property of the plaintiff.

(iii) For costs of this suit.

(iv) Any other equitable relief plaintiff is found entitled.

This suit coming this 11th day of October 1954 before Shri M.H.Kazi, Civil Judge, Senior Division, Bijapur in the presence of the pleader Shri G.R.Jahagirdar for the plaintiff and the Asst. Government pleader for the defendant it is hereby ordered and decreed.

The plaintiff's suit is dismissed. The parties do bear their own costs. It is, however, declared that the defendant is not entitled to recover more than Rs. 1000/- from the plaintiff in respect of the shortage of 50 bags of jowar in pit No.8 at Muvinhippargi.

Bill of costs.

For plaintiff.			For defendant.	
1. Stamp on plaint.	Rs.	19-4-0		0-0-0
2. Vakalatnama.	"	0-10-0		0-0-0
3. Stamp on Exhs. 4,5,6,7,17,18,22,23,26.		8-10-0	Exs. 9,10,11,12,25	3-2-0
4. Process fees.		2-8-0	Witness bhatta.	27-0-0
6. Witness Bhatta.		0-0-0		
9. Pleader's fees.		18-12-0	Pleader's fees.	18-12-0
(Minimum)		46-12-0		48-14-0
Costs disallowed.			Costs disallowed.	
On Exhs. 4,5,6,7,17, 18,22,23,26,		5-10-0	Exhs. 9,10,11,12 25.	3-2-0
Balance.		41-2-0	Balance	45-12-0

Given under my hand and seal of the Court this 11th day of October 1954.

Clerk. Sd/- XXX

Sd/- M.H. Kazi

Civil Judge, Sr.Dn.,

Plff's pleador.

Deft's pleader.

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Decree.

In the Court of the Civil Judge, Sr.Dn.,

Bijapur.

Civil Suit No. 265 of 1952.

1. Muttappa Kallappa Pattad, aged 30,
Lingayat, Agriculturist, Konutagi,
Taluka Bijapur .... Plaintiff.

vs.

1. The State of Bombay .... Defendant.

Claim Rs. 200/-

Suit filed on 14-8-1952.

Suit registered on 15-8-1952.

Herein the plaintiff sues as follows:

1. The plaintiff was working as godown keeper huvin hipperagi, taluka Bagalkot in the year 1949-50. During September last, there was a heavy down pour of rain, which caused damage to the grain pits due to percolation of water. The plaintiff being in charge of the grain pits and the godown. It was the duty of the watchman to see the grain pits were not tampered with. On emptying the grain pit No.8, of the said village, it was alleged that there was a shortage of the stock by 50 bags of jowar and the matter was reported to the office of the Mamlatdar, who in turn sent report to the D.D.O. For the shortage of the grains in pits it is really the watchman who was responsible. Without any preliminary inquiry, the plaintiff was immediately discharged; his services being terminated and at that time the watchman was found absconding from the village.

The Aval Karkun who was not competent to hold an inquiry according to the Government servants' Conduct Rules etc., held an inquiry in slip shod manner and filed the complaint against the plaintiff for mis-appropriation etc. which however was ended in 'A' summary report by the Police. Not attempt was made to secure the presence of the witnesses Basappa Chandappa Shankarappagol. The plaintiff understands that he was not even examined either by the Aval Karkun or the Police.

3. No regular inquiry was made either departmental or police. No proper procedure was followed and the termination of the service of the plaintiff by the Government under the circumstances is both illegal and the action of the Government offends against the rules of natural justice and equity. Hence the termination of the service of the plaintiff is illegal.

4. The plaintiff's suit is for the re-instatement to his former post in as much as no offence or dereliction of duty is proved against him.

5. The order of the District Magistrate that the plaintiff was responsible for the loss, if it had been caused, is illegal and ultra vires as he (1) The District Magistrate did not follow the rules of inquiry and (2) set up an inquiry by incompetent persons; (3) no statements of any persons were recorded in the presence of the plaintiff; and (4) nor was he allowed to cross examine the persons so examined (5) no dates of hearing were intimated to the plaintiff; (6) that no opportunity was given to him to state and prove his case (7) in fact everything was done behind the back of the plaintiff;(8) so fixing up of the responsibility for the loss on the plaintiff was improper, and illegal.

6. The cause of action arose when the plaintiff came to know of the order of the District Magistrate, on 13-1-1950.

7. The cause of action arose in the territorial jurisdiction of this Court, and as the plaintiff resides within the jurisdiction of the Court, this Court has power to try this suit.

8. The suit is for declaration that the order

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passed by the District Magistrate on 12-8-1950 known to the plaintiff on 13-1-1952 was illegal and ultravires. The suit valued at Rs.200 and the Court fees are paid on that amount accordingly.

9. Due notice of this has been given as required by section 80 of the Civil Procedure Code 1908 on 6th May 1952.

10. The plaintiff prays:

(i) It should be declared that order passed by the District Magistrate on 12-8-1950 as illegal as he passed that order without going through the procedure as laid down by the Government in the matter of the conduct of the Government servants.

(ii) Costs of the suit should be awarded.

(iii) Any other equitable or just relief, the Court thinks the plaintiff is entitled to.

This suit coming this 11th October 1954 before Shri M.H.Kazi Civil Judge, Senior Division, Bijapur in the presence of the pleader Shri G.R.Jahagirdar for the plaintiff and the Asst. Government pleader for the defendant it is hereby ordered and decreed.

The plaintiff's suit stands dismissed. The parties do bear their own costs.

Bills of costs.

For plaintiff.			For defendant	
				Rs.A.P.
1.	Stamp on plaint.	18-12-0		0-0-0
2.	Vakalatnama.	0-10-0		0-0-0
3.	Stamps Exhs. 4,5, 6,7.15,19,20,21,24, 31,33,39,69.	8-2-0	Exhs. 9-10-11-12-16 22,26,30, 45,46	6-6-0
4.	Process fees.	2-8-0		0-0-0
5.	Witness Bhatta.	0-0-0		16-2-0
6.	Pleaders fees on Rs.200/- (Minimum)	18-12-0		18-12-0
		48-12-0		41-4-0

Costs disallowed.

For plaintiff.		for defendant.	
Exhs. 4,5,6,7,18,19, 20-21,24,31,35,43,63.	8-2-0	Ex. 9.10.11.12.16. 22,26,30,45,46.	6-6-0
Balance.	40-10-0	Balance.	34-14-0

Given under my hand and seal of the Court this

11th day of October 1954.

Clerk. Sd/ xxx.

Sd. M.H. Kanji.

Civil Judge, Sr.Dn.,
Bijapur.

Plff's pleader.

Deft's pleader.

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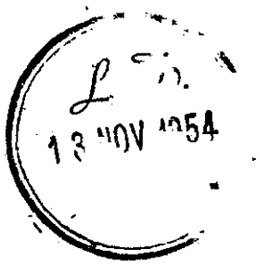
No. S.V.P.ADM-SR/54,
Bijapur, 8-11-1954.



To

The Remembrance of Legal Affairs, Bombay.

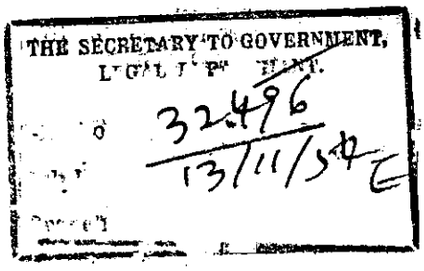
Subject :- Bijapur Civil Suit Nos. 264 and 265/1952 (Shri. K.M. Patted Plff. In C.S. No. 265/52 and Shri. Shivagondappa Plff. in C.S. No. 264/52.

R.P.A.D

I enclose the copies of the reports bearing No. 1275 dated 11-10-1954 and 1349 dated 21-10-1949 from the District Government Pleader Bijapur.

For reasons stated by him the District Government Pleader states that the decision of the Civil Court should be acquiesed in and not appealed against. --- Further instructions in the matter are solicited.

for Collector (S) Bijapur.



Sd/ M.L.

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Suit No 265 of 1952 against Govt has been dismissed. The decision is in Govt's favour. No action is to be taken therein.

Suit No 264 of 1952 against Govt has also been dismissed. A declaration is however granted therein that Govt is not entitled to recover from the plff more than Rs 1000/-. The plff was one of the two sureties who guaranteed jointly and severally to pay Rs 1000/- to Govt in case of default by the principal. In the Order sanctioning the opening of the suit it was made clear that plff is liable to Govt on the surety bond to the extent of Rs 1000/- and the declaration granted by the Court is therefore in accordance with the terms sanctioned. No action is necessary in this suit also—

Sd/ M.L.
16-11-54

(G 1)

Suits.
Bijapur.

For a declaration that the order passed by the District Magistrate and Collector directing recovery of Rs. 1,250/- being the cost of 50 bags of jowar misappropriated by Shri Pattad, from him and his sureties, as arrears of land revenue, is illegal and not binding on the plaintiff, etc.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 26226/E
Bombay Castle, 19th November 1954.

Read Government Resolution, Legal Department No.23099/E, dated the 17th November 1953.

Endorsement from the District Government Pleader, Bijapur

In the Court of the Civil Judge (Senior Division), Bijapur.	:	No. 1276,
	:	dated the 11th
Civil Suit No. 264 of 1952.	:	October 1954,
Shivagondappa Honamallappa Hebballati...Plff.	:	stating that the
vs.		
The State of Bombay. ... Deft.	:	suits noted in the
and		
Civil Suit No. 265 of 1952	:	margin were
Shri Mutappa Kalalappa Patted	:	decided by the
vs.		
The State of Bombay.	:	Civil Judge

(Senior Division), Bijapur on the 11th October 1954 when the following orders were respectively passed in each suit:-

In Civil Suit No. 264 of 1952.

" The plaintiff's suit is dismissed. The parties do bear their own costs. It is, however, declared that the defendant is not entitled to recover more than Rs. 1000/- from the plaintiff in respect of the shortage of 50 bags of jowar in pit No.8 at Huvinhippargi."

In Civil Suit No. 265 of 1952.

" The plaintiff's suit stands dismissed. The parties do bear their own costs."

Letter from the District Government Pleader, Bijapur No. 1335, dated the 19th October 1954, forwarding uncertified copies of the judgment and decree.

RESOLUTION: The result of the suits is recorded.

By order and in the name of the Governor of Bombay,

R T Katarki
original (R.T.KATARKI)
Deputy Secretary to Government.

To
The Civil Supplies Department,
The Collector of Bijapur (the certified copies of the judgments and decrees are returned herewith. Govt. has decided not to file an appeal in these cases),
The District Government Pleader, Bijapur.

recd. on 19/11
issued
hs 12/11

Serious Illegality 12/11

File in S. Bij. 12/53

19/11

20/11

1-12/53

S. BIJ

27.11.14